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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/966,793	09/28/2001	David James Van Eperen	KCC-16,794	5085

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EXAMINER
AFTERGUT, JEFF H

ART UNIT	PAPER NUMBER
1733	

DATE MAILED: 07/16/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

VB

Office Action Summary	Application No.	Applicant(s)	
	09/966,793	VAN EPEREN ET AL.	
	Examiner	Art Unit	
	Jeff H. Aftergut	1733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____ .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-37 is/are pending in the application.

4a) Of the above claim(s) 25-37 is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 1-24 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4,5,8 .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1-24, drawn to a method of tucking and folding a pair of refastenable side seams in a body portion of a pant-like garment, classified in class 156, subclass 227.

II. Claims 25-37, drawn to an apparatus for tucking and folding a pair of refastenable side seams in a body portion of a pant-like garment, classified in class 493, subclass 405.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the apparatus as claimed can be used to practice another and materially different process such as one where the tucking and folding were performed downstream of the vacuum conveyor mechanism and not associated with the sides of the vacuum conveyor mechanism as suggested by Westphal et al (cited herein).

3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

4. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for

examination purposes as indicated is proper. It should be noted that the prosecution of both the method and apparatus also has associated with it a prosecution and/or examination burden separate from a search burden wherein different limitations are given varying degrees of weight in process claims verses apparatus claims.

5. During a telephone conversation with Melanie Rauch on 7-9-03 a provisional election was made without traverse to prosecute the invention of Group I, claims 1-24. Affirmation of this election must be made by applicant in replying to this Office action. Claims 25-37 have been withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

6. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

8. Claims 1-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over the admitted prior art in view of Japanese Patent 9-131,364 and Westphal et al.

The admitted prior art suggested that it was known at the time the invention was made to form a disposable undergarment with refastenable side seam fasteners therein and additionally suggested that it was desirable to tuck and fold such so formed articles along the side seams for packaging purposes. The admitted prior art additionally suggested that it was known at the time the invention was made to incorporate tucking in folding mechanisms for side seams of such so formed undergarments wherein such known mechanisms included mechanical blades which rotate or travel with the product machine direction and push the sides in from each side of a conveyor as the pant-like articles are being conveyed to a stacking and accumulating device. The admitted prior art additionally suggested that instead of these mechanical rotated blades one skilled in the art was well aware of the use of air bars to tuck the side seams inward as the product was being conveyed. The admitted prior art additionally suggested that it was known to employ vacuum while conveying the products, however the amount of vacuum applied was not sufficient to retain the sides of the product and creasing in undesirable locals resulted in the finished assembly. The admitted prior art failed to expressly suggest that one knew to employ a vacuum conveyor in combination with the tucking and folding of the side seams of the pant-like articles.

However, in the art of packaging pant-like articles, as suggested by Japanese Patent '364, it was known at the time the invention was made to tuck and fold the side seams of the undergarment as the same was being conveyed along a conveyor. Applicant is specifically referred to Figures 1 and 2 where the undergarment was opened up along the conveyance path, the side seams were tucked and folded, and the undergarment was compressed after tucking to complete the folding operation. The reference clearly suggested that as the undergarments were

fed along the conveyor 10, it was subjected to side seam tucking and folding with members 7 acting upon the undergarment on opposite sides of the conveyor. The reference additionally suggested that those skilled in the art would have compressed the assembled undergarment with the sides tucked therein as suggested where the undergarment passes rollers 16 and 11 of the device. The reference failed to make mention of the use of vacuum on the conveyors as the undergarments were fed along the path of the folders for retaining the undergarment in an open disposition proper for tucking and folding followed by conveyance to the compression operation.

The reference to Westphal et al suggested that those skilled in the art at the time the invention was made would have incorporated vacuum conveyors for feeding an undergarment along a path prior to the tucking and folding of the side seams in the manufacture of an article where the undergarment was opened up with the use of the vacuum conveyors. As the vacuum conveyors diverged, the undergarment was opened up and prepared to folding and tucking of the side seams prior to packaging the undergarments. The reference suggested that those skilled in the art would have known to employ a vacuum conveyor in conjunction with the tucking and folding of the side portions of the undergarment. The amount of vacuum applied can be variable or constant and one skilled in the art would have determined through routine experimentation the desired amounts of vacuum necessary to retain the undergarments during transport, tucking, and folding. Applicant is specifically referred to Figures 1 and 9, and column 5, lines 39-68. It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ a vacuum conveyor in Japanese Patent 9-131,364 to facilitate proper opening up and compaction as well as feeding of the undergarments as Westphal et al clearly suggested such would have been useful in a tucking a folding arrangement for feeding the undergarments and

wherein the undergarments being treated included those having refastenable side fasteners associated with the side seams as admitted was known by applicant's admitted prior art.

With regard to the various dependent claims, the applicant is advised that the use of mechanical blades which were rotated during the tucking operation was admitted as known in the art by applicant. Likewise, the use of air to tuck the side seams inward was additionally admitted as known by applicant. Use of such known means would have been understood to have been a functionally equivalent alternate expedient to the tucking mechanisms suggested by Japanese Patent '364. Additionally, the amount of vacuum applied would have been the conventional amounts employed in the process as modified by Westphal et al. Note that applicant has admitted that 15 inches of water was known. Additionally, the feeding of the undergarments to an accumulation device which includes stacker fingers was known in the art and such is taken as conventional stacking and accumulating devices. The use of the process on an undergarment which was a training pant or a swim pant would have been within the purview of the ordinary artisan as both such pant-like articles were known to have been tucked and folded along the sides in the packaging of the same.

Double Patenting

9. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

10. Claims 1-24 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-19 of copending Application No. 09/967,024 in view of the admitted prior art and Japanese Patent 9-131,364.

The claims of the earlier application recite a similar process but fail to recite that one skilled in the art would have acted upon an underpant with refastenable side seams therein. However, as expressed by applicant's admitted prior art it was known to have been desirable to tuck and fold such seams for packaging of the same. additionally, the prior claims do not recite compressing the tuck and folded article, however such was known in a tuck and fold device as suggested by Japanese Patent 9-131,364. It would have been obvious to one of ordinary skill in the art at the time the invention was made that the device and process of Serial Number 09/967,024 would have been useful for tucking and folding the known undergarments having refastenable fasteners therein as admitted by applicant as known in the art and additionally to include a compressing step subsequent to the tucking a folding as suggested by Japanese Patent 9-131,364 as such compression would have allowed for easier packaging of the finished end product.

This is a provisional obviousness-type double patenting rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeff H. Aftergut whose telephone number is 703-308-2069. The examiner can normally be reached on Monday-Friday 6:30-3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael W. Ball can be reached on 703-308-2058. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

Jeff H. Aftergut
Primary Examiner
Art Unit 1733

JHA
July 10, 2003